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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

L. BATES,

Petitioner,

vs.

ROBERT WALKER,

Respondent.

JOHN MAHONEY,

Petitioner,

vs.

MICHAEL MAYS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT ROBERT WALKER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the court of appeals' decision, holding that the arbitrary denial of a request to call witnesses at a state prison disciplinary hearing in violation of state law and due process requirements states a Section 1983 claim, present an appropriate issue for review?

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OPINIONS BELOW

The opinion of the court of appeals is reported at 23 F.3d 652. R. at 1a-15a.[1] The decision of the district court and the Report and Recommendation of the Magistrate Judge are not officially reported. R. at 27a-38a, 39a-46a.

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1. References are to the decisions of the courts below annexed as the Appendix to the Petition, hereinafter cited as "R. at ___."

JURISDICTION

The judgment of the court of appeals was entered on April 29, 1994. The Petition for a writ of certiorari was filed on or about July 15, 1994. Petitioner purports to invoke this Court's jurisdiction under 28 U.S.C. § 1254(1).

COUNTERSTATEMENT OF THE CASE

Respondent Robert Walker was placed in punitive isolation for more than two and one-half months in consequence of a prison disciplinary hearing that Petitioner admits violated both New York law and constitutional due process requirements. Due process and state regulations guarantee inmates the fundamental right to call witnesses at such hearings but the well-pleaded facts reveal that Mr. Walker's timely request to call three witnesses was refused and the hearing officer had no apparent legitimate reason for excluding their testimony. Given these record facts, the court of appeals correctly declined to find "beyond doubt that [Mr. Walker] could prove no set of facts in support of [a Section 1983 claim]." *See Haines v. Kerner*, 404 U.S. 519, 519 (1972).

The decision is plainly an inappropriate choice for certiorari. Far from announcing a new or conflicting legal rule, as Petitioner contends, the decision below proceeds from a straightforward application of this Court's precedents to the individualized facts fairly laid out in the *pro se* Complaint. The court of appeals did not hold, as Petitioner would have this Court believe, that every error at a state prison disciplinary hearing resulting in segregated confinement gives rise to a damage claim under Section 1983, but neither did it accept Petitioner's overly broad and unsupported "rule" that a postdeprivation administrative reversal of a punitive confinement sentence automatically "cures" the due process violations that earlier occurred at the predeprivation hearing.

In rejecting Petitioner's claim, the decision below is entirely consistent with the precedents of this Court and other courts of appeals which have long recognized the fundamental right of a prison inmate facing punitive confinement to predeprivation process, including the right to call witnesses (or a good reason for dispensing with that basic right), and requiring state hearing officers (absent the successful interposition of a qualified immunity defense) to answer in damages for denying inmates predeprivation process. *See Wolff v. McDonnell*, 418 U.S. 539 (1974); *Cleavinger v. Saxner*, 474 U.S. 193 (1985). These well-established principles, moreover, have been an integral part of the New York State regulatory scheme governing prison disciplinary proceedings ever since *Wolff*; the court of appeals' decision therefore in no way threatens to alter or undermine the way in which these proceedings are administered in the future, as Petitioner hypothesizes.

A. Statement of Facts

1. Background

This action results from Mr. Walker's two and one-half month punitive confinement in a Special Housing Unit ("SHU") at the Southport Correctional Facility in Pine City, New York. On or about December 5, 1990, a Misbehavior Report was filed by Officer P. Youmans, a corrections officer at the Southport Facility, charging Mr. Walker with violations of prison misbehavior rules. *See* R. at 3a.

2. The Administrative Proceedings

On December 10, 1990, a Tier III disciplinary hearing was convened by Petitioner to consider the alleged violations. *See* R. at 3a.[2] Walker denied the charges against him and requested an opportunity to call three witnesses in his defense. *See id.* at 4a.[3] Without articulating any reason for doing so, Petitioner refused Walker's request. *See id.* Petitioner thereafter found Mr. Walker guilty of the alleged violations, and imposed a sentence of 120 days punitive confinement in the SHU.[4] *See id.* Mr. Walker was immediately remanded to punitive confinement. *See id.*

Mr. Walker thereafter filed a timely administrative appeal. *See* R. at 4a. Sixty-four days into Mr. Walker's punitive confinement, by notice dated February 11, 1991, Mr. Walker's penalty of confinement in the SHU was reversed "as of February 8, 1991." R. at 4a. The notice included no explanation for the reversal. *See id.* It did, however, authorize a rehearing of the matter "within 7 days of the notice;" no rehearing occurred. Rather, the record of the disciplinary

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2. Under New York State regulations, misbehavior reports may be reviewed at a Tier I, II, or III hearing. Tier III hearings are generally used for more serious charges and carry stiffer penalties. *See* 7 N.Y.C.R.R. § 270.3 (1989).

3. The witnesses Mr. Walker would have called, had Petitioner allowed him to do so, included Officer Youmans, who filed the Misbehavior Report, Gallery Officer Quarnek and Correctional Sergeant Zarneki. *See* R. at 4a.

4. A SHU consists of "single-occupancy cells grouped so as to provide separation from the general population" of the prison. 7 N.Y.C.R.R. § 300.2(b)(1983). Inmates in SHU confinement are isolated from other inmates and allowed only limited personal belongings. Shower and exercise rights are also limited. *See McCann v. Coughlin*, 698 F.2d 112, 117 n.5 (2d Cir. 1983).

hearing was summarily expunged from Mr. Walker's institutional file and the remainder of his sentence was suspended. *See id.* Mr. Walker was not released from the SHU, however, until February 22, 1991 -- two weeks after the reversal and all charges against him had been dropped. *See id.*

B. Proceedings Below

1. Nature of the Action

On February 28, 1991, Mr. Walker commenced this action by the filing of a *pro se* Complaint in the United States District Court for the Western District of New York. *See* R. at 4a. The Complaint named hearing officer Bates, Superintendent Robert McClellan and Commissioner Thomas A. Coughlin III as defendants. *See id.* The Complaint thereafter was amended to reflect the district court's dismissal of Superintendent McClellan and Commissioner Coughlin as parties. *See id.* The Complaint, as amended, alleges that the denial of Mr. Walker's request to call witnesses rendered the hearing constitutionally deficient. *See* R. at 4a-5a.

By notice of motion dated September 21, 1992, Petitioner moved before Magistrate Judge Fisher,[5] for an order pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure dismissing the Complaint on the sole ground that the administrative reversal, 77 days into Mr. Walker's 120 day sentence of punitive segregated confinement, "cured" the procedural improprieties that occurred at the hearing, thereby barring Mr. Walker's claim under the reasoning of *Young v. Hoffman*, 970 F.2d 1154 (2d Cir. 1992), *cert. denied*, 114 S.Ct. 115 (1993). *See* R. at 5a.

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5. By order dated July 23, 1992, the case was referred to Magistrate Judge Kenneth R. Fisher pursuant to 28 U.S.C. § 636(b)(1)(A) and (B). *See* R. at 40a.

2. The Magistrate Judge's Report And Recommendation

On October 9, 1992, Magistrate Judge Fisher submitted a Report And Recommendation to District Judge Larimer. *See* R. at 45a. The magistrate judge concluded that the allegations that Petitioner refused, without any expressed reason, to permit Mr. Walker to call any witnesses at the disciplinary hearing, and his subsequent punitive confinement in the SHU for approximately two and one-half months, stated a civil rights claim. *See* R. at 40a-45a. The magistrate judge further concluded that the later administrative reversal of the hearing determination did not bar Mr. Walker from seeking damages for the time already served. *See id.* at 41a-44a. Magistrate Judge Fisher therefore recommended that Petitioner's motion to dismiss be denied in its entirety. *See id.* at 45a.

3. The District Court's Decision

By Decision and Order dated January 5, 1992, District Judge Larimer rejected the magistrate judge's recommendation. *See* R. at 5a, 27a-28a. The district judge concluded, based largely on *Young v. Hoffman*, 970 F.2d 1154 (2d Cir. 1992), *cert. denied*, 114 S.Ct. 115 (1993), that the administrative reversal automatically insulated the disciplinary hearing from judicial scrutiny by "curing" any constitutional improprieties that earlier occurred there, and dismissed the Complaint with prejudice. *See* R. at 5a, 27a, 35a-37a. Mr. Walker timely filed a notice of appeal of that determination on February 1, 1993. *Id.* at 5a.

4. The Second Circuit's Decision

By opinion dated April 29, 1994, the court of appeals reversed. R. at 1a-15a. Relying on this Court's opinion in *Wolff v. McDonnell*, 418 U.S. 539 (1974), and New York State regulations governing prison disciplinary proceedings, the court

of appeals held that absent special circumstances involving a threat to institutional safety or correctional goals, an inmate facing a sentence of punitive confinement in a Special Housing Unit is entitled to the predeprivation procedural protections of the due process clause, including the right to call witnesses in his defense. *See* R. at 7a-8a. The court of appeals further concluded that the arbitrary denial of an inmate's right to call witnesses at a predeprivation hearing which results in punitive confinement gives rise to a claim for damages under Section 1983. *See id.* at 8a, 14a-15a. There being no apparent (or even claimed) reason on the record for denying Mr. Walker's timely request to call three witnesses at the disciplinary hearing, the court of appeals concluded that Mr. Walker's Complaint stated a claim under Section 1983. *See id.* at 15a.

In reaching its conclusion, the court of appeals fully considered and rejected Petitioner's contention that the availability, under New York regulations, of administrative appeal "cured" the constitutional violations that admittedly occurred at the disciplinary hearing or otherwise automatically immunized the hearing from judicial scrutiny. *See* R. at 8a-15a. The Second Circuit rejected as "proposed fiction" the notion advanced by Petitioner that the "administrative appeals process provided for prisoners is a continuation of the disciplinary hearing" and provides all the process due them. *See id.* at 14a. Rather, the court stated, a Section 1983 cause of action accrues when the deprivation occurs as a result of a disciplinary hearing that fails to comply with state law and due process requirements, and that harm cannot later be undone through postdeprivation procedures.[6] *See id.* at 14a-15a.

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6. The court of appeals distinguished its decision in *Young v. Hoffman*, 970 F.2d 1154 (2d Cir. 1992), *cert. denied*, 114 S.Ct. 115 (1993), noting that there, unlike here, the administrative reversal occurred before the inmate served any part of his punitive confinement sentence and thus "'suffered no interference with a liberty interest and

(continued...)

The court of appeals also concluded that the broad protections claimed by Petitioner as a consequence of the postdeprivation reversal would in effect confer indirectly the absolute immunity for hearing officers that this Court denied them in *Cleavinger v. Saxner*, 474 U.S. 193 (1985). The court of appeals declined to decide the possible availability of a qualified immunity defense here on an undeveloped record, and remanded the case to the district court for further proceedings. *See id.* at 15a.

ARGUMENT

THE COURT OF APPEALS' DECISION DOES NOT FALL WITHIN THE CATEGORY OF MOST EXTRAORDINARY CASES WARRANTING REVIEW BY CERTIORARI.

In finding that Mr. Walker's *pro se* Complaint stated a Section 1983 cause of action, the court of appeals held only that a state may not deprive an inmate of a protected liberty interest while both arbitrarily denying him constitutionally-mandated and state-required predeprivation process and a postdeprivation remedy for the constitutional harm suffered as a result. That result is fully consistent with the results and rationale of the decisions of this Court and the courts of appeals which have recognized a damage remedy in favor of state prison inmates who are confined to punitive segregation without a

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6.(...continued)
ha[d] no valid claim for relief.'" R. at 12a. The court of appeals also distinguished other decisions involving inmates who were placed in segregated confinement for "administrative" rather than punitive purposes, or for reasons other than the due process violations that occurred at the disciplinary hearing, finding that Mr. Walker's confinement in the SHU was for punitive purposes only and solely as a result of the due process violations that occurred at the hearing. *See* R. at 13a.

predeprivation hearing that comports with due process requirements and state law.

A. The Court Of Appeals Correctly Held That The Arbitrary Denial Of The Right To Call Witnesses At A State Prison Disciplinary Hearing Resulting In Punitive Confinement States A Section 1983 Claim.

In *Wolff v. McDonnell*, 418 U.S. 539 (1974), this Court held that inmates at risk of punitive segregation are constitutionally entitled to predeprivation process that includes the right to call witnesses at prison disciplinary hearings, unless doing so would be "unduly hazardous to institutional safety or correctional goals." 418 U.S. at 566. The *Wolff* Court concluded that the failure of a state prison hearing officer to afford an inmate these basic rights prior to confinement constitutes a due process violation compensable under Section 1983. *See id.* at 555-67.[7]

Wolff strikes a necessary balance between institutional needs and objectives, on the one hand, and the procedural due process "safeguards" that prison inmates retain and which act "as a hedge against arbitrary determination of the factual

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7. Consistent with *Wolff*, New York State prison administration regulations provide a number of predeprivation safeguards to which an inmate facing punitive confinement is guaranteed at a disciplinary hearing including the right to "call witnesses on his behalf provided their testimony is material, is not redundant, and doing so does not jeopardize institutional safety or correctional goals." 7 N.Y.C.R.R. § 253.5(a)(1983). The regulations further provide that: "if permission to call a witness is denied, the hearing officer shall give the inmate a written statement stating the reasons for the denial, including the specific threat to institutional safety or correctional goals presented." *Id.* No such threat to prison security existed here, nor was one offered by Petitioner as the basis for denying Mr. Walker's request to call witnesses. *See* R. at 15a.

predicate for imposition of the sanction," on the other hand. *Id.* at 572 n. 19. Indeed, this Court has subsequently cited prison disciplinary proceedings which threaten punitive confinement as paradigmatic situations in which such predeprivation hearings are constitutionally required. *Zinermon v. Burch*, 494 U.S. 113, 127-28 (1990) (citing *Wolff*, 418 U.S. at 557-58); *see also Ingraham v. Wright*, 430 U.S. 651, 678-79 (1977) ("We have found frequently that some kind of prior hearing is necessary to guard against arbitrary impositions on interests protected by the Fourteenth Amendment. *See, e.g., Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974).") (citations omitted)); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("'[T]he root requirement' of the Due Process Clause [is] 'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.'") (citations omitted).

The courts of appeals have uniformly read and applied *Wolff* to guarantee inmates predeprivation process including, specifically, the right to call witnesses. *See, e.g., Smith v. Massachusetts Dep't of Correction*, 936 F.2d 1390 (1st Cir. 1991); *Walker v. Navarro Co. Jail*, 4 F.3d 410 (5th Cir. 1993); *Connor v. Sakai*, 15 F.3d 1463 (9th Cir. 1993), *petition for cert. filed*, 62 U.S.L.W. 3827 (May 26, 1994) (No. 93-1911); *Walker v. Sumner*, 14 F.3d 1415 (9th Cir. 1994); *Smith v. Maschner*, 899 F.2d 940 (10th Cir. 1990). As these and other cases make clear, the failure of a prison hearing officer to afford an inmate such process prior to disciplinary confinement gives rise to a civil rights claim. *See id.*; *see also Young v. Kann*, 926 F.2d 1396 (3d Cir. 1991).

There are, of course, situations where an inmate may be confined without a predeprivation hearing that comports in all respects with *Wolff*. But as the court of appeals correctly found, none are present on this record. Thus, this Court has explained that a predeprivation hearing is not required when inmates are confined to "administrative segregation" for

"nonpunitive reasons." *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). Instead, such inmates are entitled to a more limited set of protections, including the right to a "periodic review" of their confinement. *Id.* at 477 n. 9.[8] In reaching this conclusion, the Court in *Hewitt* contrasted administrative confinement, which "is something of a catchall" and "is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration," *id.* at 468, with punitive or disciplinary segregation, which carries with it the "stigma of wrongdoing or misconduct." *Id.* at 473. The latter form of segregation would require that the predeprivation due process procedures specified in *Wolff* be afforded before the deprivation occurs.[9]

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8. New York State Regulations prescribe a number of reasons, other than sentence to a disciplinary term, for which inmates may be admitted to the SHU including detention, 7 N.Y.C.R.R. § 301.3 (1991), administrative segregation, *id.* § 301.4 (1990), protective custody, *id.* § 301.5, and keeplock for reasons such as confinement to await disposition of a disciplinary hearing. *Id.* § 301.6(a)(1). Section 301.4(b) permits "administrative segregation" confinement of an inmate when a determination is made by the prison facility that "the inmate's presence in general population would pose a threat to the safety and security of the facility." New York's regulations also mandate that inmates assigned to "administrative segregation" confinement, as opposed to "disciplinary" confinement, "shall have such status reviewed every seven days for the first two months, and every 30 days thereafter, by a three-member committee consisting of a representative of the facility executive staff, a security supervisor, and a member of the guidance and counseling staff." *Id.* § 301.4(d). The results of this review must be "forwarded in writing to the superintendent for final determination." *Id.*

9. Petitioner glosses over the clear distinction drawn by this Court and New York law between punitive and administrative confinement in an apparent attempt to justify Mr. Walker's unlawful confinement. *See* Petition at 20-22. Thus, Petitioner urges here, as he did below, that Mr. Walker's confinement amounted to confinement "pending appeal" and,

(continued...)

Petitioner's argument below that he should not be held to respond in damages because of the later administrative reversal is unsupported by any case law and is precluded by this Court's decision in *Cleavinger v. Saxner*, 474 U.S. 193 (1985). In *Cleavinger*, two inmates, who had successfully appealed their improperly imposed detention, later sought damages for the violation of their due process rights occasioned by their punitive confinement following denial of their request to call witnesses.[10] The state sought to avoid liability for the unlawful actions of the hearing officer on the ground that the later administrative reversal immunized the prison disciplinary proceedings from judicial scrutiny. *Id.* at 205-06. The Court rejected the state's contention and instead found that qualified not absolute immunity was sufficient to protect hearing officers from liability for the unlawful deprivations they had caused. *Id.* at 206-08.

Wolff, Hewitt and Cleavinger, taken together, require that prison inmates be afforded certain fundamental procedural protections, including the right to call witnesses before they are

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9.(...continued)
therefore, "administrative" in nature or, at least not "materially" different from "administrative" confinement. *See id.* Given the absence in the record of any mandated finding of a threat to institutional safety or periodic review, the Second Circuit correctly declined to find that Mr. Walker's confinement was for any purpose other than punishment. R. at 14a. The Second Circuit also correctly refused to find that Mr. Walker could have unilaterally transformed his punitive confinement into administrative confinement by administratively appealing his sentence. *See id.*

10. The inmates had sought to call a number of fellow inmates at their disciplinary hearing but the hearing officer denied the request finding that such testimony would have been cumulative in light of the submissions already presented by the inmates at the hearing. 474 U.S. at 195-96. Again, no such finding was made (or would have withstood scrutiny if made), by Petitioner at Mr. Walker's disciplinary hearing.

placed in punitive confinement, and provide that denial of such protections give rise to a Section 1983 damages remedy. This is the very legal standard the court of appeals recited and relied upon:

> The rule is that once prison officials deprive an inmate of his constitutional procedural rights at a disciplinary hearing and the prisoner commences to serve a punitive sentence imposed at the conclusion of the hearing, the prison official responsible for the due process deprivation must respond in damages, absent the successful interposition of a qualified immunity defense.

R. at 14a-15a.

The court of appeals' decision thus is both entirely consistent with governing law and does not upset the balance struck in *Wolff* between the sometimes competing interests of prisoner's rights and the legitimate concerns which face prison officials. While Petitioner predictably raises the spectre of an "explosion" in prison administrative proceedings and resulting expenditure of judicial and state resources, the decision below does no more than reaffirm the basic procedural rights already afforded state prisoners by the Constitution and New York law, and require they be compensated when they are deprived those basic rights. *See, e.g., Cleavinger v. Saxner*, 474 U.S. at 207 (explaining that prison officials have no reason to fear liability and no undue burden would be placed on prison administrative proceedings as long as prison officials "follow the clear and simple constitutional requirements of *Wolff v. McDonnell*"); *see also Butz v. Economou*, 438 U.S. 478, 506-07 (1978) ("[I]t is not unfair to hold liable the official who knows or should know he is acting outside the law, and . . . insisting on an awareness of clearly established constitutional limits will not unduly interfere with the exercise of official judgment."). Allowing prison officials the ability to insulate their actions from judicial

scrutiny by later choosing to reverse disciplinary determinations on administrative appeal, is open to obvious abuses which this Court has recognized should and can be avoided.

B. The Court Of Appeals' Decision Neither Establishes A Novel Rule Of Law Nor Conflicts With Prior Precedents.

In a stretch to create an issue worthy of review where none in fact exists, Petitioner, for the first time in this Court, seeks to invoke this Court's decisions in *Zinermon v. Burch*, 494 U.S. 113 (1990), *Hudson v. Palmer*, 468 U.S. 517 (1984), and *Parratt v. Taylor*, 451 U.S. 527 (1981), and then erroneously contends that the decision below is in conflict with them. Petitioner's efforts are unavailing.

In *Zinermon*, this Court held that where state employees are specifically authorized to make deprivation determinations and are required but fail to afford predeprivation procedural safeguards, the state must answer in damages under Section 1983, and the availability of postdeprivation remedies -- either in the form of administrative or tort remedies -- are insufficient to substitute for predeprivation process. 494 U.S. at 138-39.

In reaching that result, this Court distinguished its decisions in *Parratt* and *Hudson* which found, in exceptional circumstances involving "random" and "unauthorized" conduct by state employees that result in a deprivation of property otherwise impossible for the state to predict or avoid, that postdeprivation remedies might be sufficient to satisfy procedural due process requirements. *Parratt* involved a state prisoner whose mail was lost because of a prison employee's negligence. 451 U.S. at 530. In *Hudson*, a prison guard deliberately and maliciously destroyed property of a prisoner during a search of his cell. 468 U.S. at 519-20. In neither case was the state official acting pursuant to any established state procedure and in the scope of his state-delegated authority

to effect the deprivations that occurred, but rather in a random, unauthorized manner which conduct was impossible for the state to anticipate. In *Zinermon*, this Court found no such "impossibility" or "random, unauthorized conduct" where the very state officials authorized to make the confinement decisions were charged the duty to secure predeprivation procedural safeguards but simply failed to follow the procedures specifically delegated to them to implement. 494 U.S. at 136-39.

Petitioner's reading of *Zinermon* is precluded by *Zinermon* itself. Indeed, in recognizing a Section 1983 claim in the circumstances of that case, this Court stated that it was "immaterial whether the due process violation . . . [arose] from . . . [the] failure to comply with state procedures . . . or from the absence of [procedures]." 494 U.S. at 135-36. Rather, this Court stated:

> Because petitioners had state authority to deprive persons of liberty, the Constitution imposed on them the State's concomitant duty to see that no deprivation occur without adequate procedural protections. It may be permissible constitutionally for a State to have a statutory scheme like Florida's, which gives state officials broad power and little guidance in admitting mental patients. But when those officials fail to provide constitutionally required procedural safeguards to a person whom they deprive of liberty, the state officials cannot then escape liability by invoking *Parratt* and *Hudson*.

Id. at 135.

Petitioner's effort to invoke *Parratt* and *Hudson* in the context of this case is likewise unavailing. Here, as in *Zinermon* and unlike *Parratt* and *Hudson*, Petitioner was

designated by the state to ensure that no deprivation occurs without adequate procedural safeguards. Petitioner's failure to provide state-mandated and constitutionally-required predeprivation process at the hearing convened to make the very deprivation determination at issue, therefore, can hardly constitute the kind of "random" or "unauthorized" deprivation that is "impossible" for the state to prevent within the meaning of *Parratt* and *Hudson*. And, in the absence of such special circumstances that render a constitutionally-sound predeprivation hearing impossible, the opportunity to be heard *before* the state deprives an individual of life, liberty or property remains, as the court of appeals rightly held, the "'root requirement'" of the due process clause. *See Loudermill*, 470 U.S. at 542 (emphasis supplied). The Second Circuit's decision thus in no way conflicts with this Court's decisions in *Zinermon*, *Parratt* and *Hudson*. Indeed, Petitioner did not even argue this line of cases in either court below.

The court of appeals' analysis also does not create a "conflict" with other circuits. *See* Petition at 10-13. The court of appeals' decisions to which Petitioner refers as being "in conflict" were all decided on highly individualized and very different sets of facts from those presented here.[11] And,

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11. *See, e.g., Lowe v. Scott*, 959 F.2d 323 (1st Cir. 1992) (involving claim by doctor that his right to private hospital privileges was wrongfully interfered with as a result of misrepresentations made by individual Hospital Board member); *Caine v. Hardy*, 943 F.2d 1406 (5th Cir. 1991) (involving claim that anesthesiologist was deprived of hospital staff privileges as a result of biased and self-interested decision-makers), *cert. denied*, 112 S. Ct. 1474 (1992); *Easter House v. Felder*, 910 F.2d 1387 (7th Cir. 1990) (finding that state regulators alleged to have conspired to revoke adoption agencies' license were protected by qualified immunity), *cert. denied*, 498 U.S. 1067 (1991); *Zar v. South Dakota Bd. of Examiners*, 976 F.2d 459 (8th Cir. 1992) (involving challenge to decision by medical board revoking state-issued medical license); *McKinney v. Pate*, 20 F.3d 1550 (11th Cir. 1994) (involving (continued...)

Petitioner cites no case that has applied the *Zinermon-Parratt-Hudson* line of cases to absolve a hearing officer from liability for procedural due process violations in the administration of a prison disciplinary hearing.

11.(...continued)
claim that state employee's job termination was effected without due process notwithstanding pretermination hearing that met procedural due process requirements because of decision maker's bias prior to and during termination proceedings).

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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